

February 6, 1974

the normal case, or a Sheriff, or a police officer, they can be mailed to the last known residence. They notify the witness to the crime of the time of the trial. At the present time this has to be done by personal service. Now with the amendment that has been offered the court is allowed to punish for contempt, which is failure to appear in court at the trial to give testimony. The original bill says that the witness whall be held in contempt for failure to appear which raises the prob lem that somebody said if you are in the hospital or you are on vacation, or what have you and you didn't get the letter. But that same situation exists today. The Sheriff can go out and not find you. Now he just can't find you you haven't violated any order today. If this bill is passed as amended, and a person fails to appear in court as a witness, because he's in the hospital or because he's out of town, or because for any other reason, he didn't receive for any good reason, he didn't receive the subpoena, that individual could go to court and explain to the court why he didn't receive the subpoena and more than likely would not be held in contempt. There would be no reason to hold him in contempt. All this bill intends to do is eliminate the necessity of sending a constable or a sheriff or a police officer out to personally serve the witnesses in a criminal case and to substitute for that personal service of the subpoena to testify be registered mail. It does not affect the rights of the defendant in the case, who is the person who goes to jail or pays the fine or is turned loose and acquitted.

PRESIDENT: Thank you, Senator Fellman. Then Cavanaugh, then

SENATOR CAVANAUGH: Would Senator Fellman yield to some questions.

PRESIDENT: Senator Fellman, yield?

SENATOR FELLMAN: OK.

SENATOR CAVANAUGH: Senator Fellman I understand it doesn't affect the defendants directly, but you've practiced extensively in Municipal Court and you understand the situation. I understand their problems in that they have no way currently, economically to provide actual notice to witnesses. They currently mail out their notice of trial dates to the witnesses, and they have no way to compel them to appear. Isn't that the situation today?

SENATOR FELLMAN: Yes.

SENATOR CAVANAUGH: But what we're doing here is making a fully innocent act subject to a criminal penalty, and that is a little disturbing to me in that you don't provide any protection to the innocent, to the actual innocent act. If an individual did receive the notice, or if the notice was mailed to an address that he no longer resided, he is subject to the criminal penalty, regardless of the actual lack of knowledge as to the trial date.

SENATOR FELLMAN: No, he's subject today. Once the Sheriff would serve him with subpoena and he fails to appear, he's subject to the same criminal notice. This substitutes the mail for personal delivery by the Sheriff.